

United States Court of Appeals

Eleventh Circuit

56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case and Names of Parties

February 15, 2006

VIA FACSIMILE-AMENDED 2/16/06

TO ALL COUNSEL OF RECORD

Re: No.04-12420 - Bankwest, Inc., et al.; Community State Bank, et al. v. Thurbert Baker, et al.

Dear Counsel:

For the purposes of the upcoming en banc rehearing in the above-referenced case, the court desires for counsel to focus their briefs on the following issues:

- 1. If they are not preempted, what provisions of the Georgia Act, Ga. Code Ann. §§ 16-17-1 - 16-17-10, apply to the plaintiffs in this case? In particular, what conduct of the plaintiff out-of-state banks is prescribed by the Georgia Act, and what conduct is not? What conduct of the plaintiff in-state payday stores is proscribed by the Georgia Act, and what conduct is not?**
- 2. For purposes of this appeal, if it is not preempted, does Ga. Code Ann. § 16-17-2(b)(4) apply to the agency agreements between the plaintiff out-of-state banks and the plaintiff payday stores, and why?**
- 3. What does the record show about the relative amount of revenue, losses, and profit that the out-of-state banks and their in-state agents had from these loans in the period preceding the May 13, 2004 order denying the plaintiffs' motion for a preliminary injunction?**
- 4. Does FDIA § 27(a), 12 U.S.C. § 1831(d)(1) preempt Ga. Code Ann. §§ 16-17-1 - 16-17-10, or any part of those provisions, as they would otherwise apply to the lending activities of the plaintiffs in this case? If so, what provisions of the Georgia Act are preempted by FDIA § 27(a)?**
- 5. Is the determination of whether a "State-chartered insured depository institution" is the actual lender for purposes of applying FDIA § 27(a) an issue of state or federal law? May a state affect the preemptive scope of FDIA § 27(a) by enacting a statute that defines the actual or de facto lender?**

The Court requests only one brief per side, that is, Appellants shall file jointly a single brief. The briefs shall be of the ordinary length **plus 15%**. Only one lawyer per side shall present oral argument. Oral argument will be held in Atlanta, Georgia, during the week of June 19, 2006. You will be notified at a later date of the specific date and time of oral arguments. The parties will be allowed 25 minutes per side.

Appellant's opening brief shall be filed in the Clerk's Office in Atlanta by 5:00 p.m., Monday, March 20, 2006. Appellee's opening brief shall be filed in the Clerk's Office in Atlanta by 5:00 p.m., Wednesday,

April 19, 2006. Any reply brief by the Appellants must be filed in the Clerk's Office in Atlanta by 5:00 p.m., Thursday, May 4, 2006. NO EXTENSIONS WILL BE GRANTED. An original and 18 copies of the en banc briefs should be filed (appellants' in blue covers, appellee's in red covers and any reply in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing (facsimile, e-mail, etc.). NO TIME FOR MAILING SHALL BE ALLOWED. Any amicus curiae briefs are due on the due date of the principal parties and participation by amicus curiae must be permitted by the en banc court. All parties are also required to upload the brief in electronic format to the court's Web site as described in 11th Cir. R. 31-5.

_____ **All counsel** are requested to file 16 copies of their opening panel briefs, record excerpts and supplemental authorities prior to 5:00 p.m., Monday, March 20, 2006.

Thank you for your attention to this matter.

Sincerely,

THOMAS K. KAHN, Clerk

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